

## 2003 DRAFTING REQUEST

### Assembly Substitute Amendment (ASA-AB73)

Received: **04/24/2003**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Bonnie Ladwig (608) 266-9171**

By/Representing: **Anne Sappenfield**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ladwig@legis.state.wi.us**

Carbon copy (CC:) to:

---

#### Pre Topic:

No specific pre topic given

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#### Topic:

Adoptive placement of abandoned babies

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#### Instructions:

See Attached--draft as a sub DHFS April 24, 2003, draft language.

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 04/25/2003	kgilfoy 04/28/2003		_____			
/1			chaskett 04/30/2003	_____	lemery 04/30/2003	lemery 04/30/2003	
/2	gmalaise	kgilfoy	jfrantze	_____	lemery	lemery	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	05/16/2003	05/19/2003	05/20/2003	_____	05/20/2003	05/20/2003	

FE Sent For:

&lt;END&gt;

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/?	gmalaise 04/25/2003	kgilfoy 04/28/2003					
/1		12-5/19 kmg	chaskett 04/30/2003		lemery 04/30/2003	lemery 04/30/2003	
			Jo 5/20	Jo 5/20			

04/30/2003 02:54:35 PM

Page 2

***LRBs0067***

FE Sent For: ·

**<END>**

**2003 DRAFTING REQUEST****Assembly Substitute Amendment (ASA-AB73)**Received: **04/24/2003**Received By: **gmalaise**Wanted: **As time permits**

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For: **Bonnie Ladwig (608) 266-9171**By/Representing: **Anne Sappenfield**This file may be shown to any legislator: **NO**Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Ladwig@legis.state.wi.us**

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Adoptive placement of abandoned babies

**Instructions:**

See Attached--draft as a sub DHFS April 24, 2003, draft language.

**Drafting History:**

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1?	gmalaise	1-4/28 Kong	1-4/30 cph	15/08 4/30			

FE Sent For:

&lt;END&gt;

## Malaise, Gordon

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**From:** Mitchell, Mark  
**Sent:** Wednesday, April 23, 2003 5:30 PM  
**To:** Sappenfield, Anne; Ladwig, Bonnie; Malaise, Gordon  
**Cc:** Campbell, Mark; Kocol, Kitty; Durkin, Therese; Radloff, Gary  
**Subject:** AB 73



AB 73, msm  
anges, 4-23-03.do.

Dear Anne, Gordon and Rep. Ladwig,

THIS IS A RE-SEND. I previously sent an erroneous draft. I apologize for the confusion. The draft attached to this e-mail is what I had intended to send.

Attached is a suggested change to 2003 AB 73 for purposes of discussion at our meeting tomorrow (Thursday). The intent of this draft is to promote a targeted discussion and is not intended to be a final draft.

I look forward to our discussion tomorrow.

--Mark

Mark S. Mitchell, Manager  
Policy Coordination Section  
DHFS/DCFS/BPP  
P.O. Box 8916  
Madison, WI 53708-8916  
(608) 261-8316  
mitchms@dhfs.state.wi.us

Draft Sub.  
Er Ludwig

SUGGESTED AMENDMENT TO 2003 ASSEMBLY BILL 73

Department of Health and Family Services

April 24, 2003

reference  
CHIPS ground

SECTION 1. 48.14(2)(a) is amended to read:

48.14(2)(a) For a minor, where parental rights have been terminated under subch.

VIII; or

SECTION 2. 48.14(2)(b) is amended to read:

48.14(2)(b) The appointment and removal of a guardian of the person for a child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839(4)(a), 48.977 and 48.978 and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian; or

SECTION 3. 48.14(2)(c) is created to read:

48.14(2)(c). The appointment of a guardian of the person for a child found to be in need of protection or services under s. 48.13(2m) because custody of the child has been relinquished.

= Clarify that  
jur. ck  
has jur.

SECTION 4. 48.185(2) is amended to read:

48.185(2) In an action under s. 48.41, venue shall be in the county where the birth parent or child resides at the time that the petition is filed. Venue for any proceeding under s. 48.363, 48.365<sup>(1)</sup> or 48.977, or any proceeding under subch. VIII when the child has been placed outside the home pursuant to a dispositional order under s. 48.345 or 48.347, shall be in the county where the dispositional order was issued, unless the child's county of residence has changed, or the parent of the child or the expectant mother of the unborn child has resided in a different county of this state for 6 months.

Venue for any proceeding under s. 48.13(2m), 48.21(4m) or 48.417(1)(b) shall be in the

concerning a child whose custody has been  
relinquished under s. 48.185(1)

county in which the relinquishment occurred. In ~~either case~~ any of these cases, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child, parent or expectant mother.

**SECTION 5.** 48.21(4)(intro.) of the statutes is amended to read:

48.21(4) CONTINUATION OF CUSTODY. (intro.) ~~If~~ Subject to sub. (4m), if the judge or circuit court commissioner finds that the child should be continued in custody under the criteria of s. 48.205, ~~he or she~~ the judge or circuit court commissioner shall enter one of the following orders:

**SECTION 6.** 48.21(4m) of the statutes is created to read:

48.21(4m) CONTINUATION OF CUSTODY; RELINQUISHED NEWBORN CHILD. If the judge or circuit court commissioner finds that a child who has been taken into custody under s. 48.195(1) should be continued in custody under the criteria of s. 48.205 the judge or circuit court commissioner shall also find that the child has been relinquished as described in s. 48.13(2m) and shall transfer guardianship and legal custody of the child to the department, a child welfare agency licensed under s. 48.61(5), or a county department authorized to accept guardianship under s. 48.57(1)(~~e~~) (4m) and shall order the department, child welfare agency, or county department to place the child for adoption under s. 48.833. The department, child welfare agency, or county department making the placement shall require ~~the~~ any proposed adoptive parent to sign a statement to sign a statement acknowledging that the proposed adoptive parent understands that there is no guarantee that the adoption will be finalized.

**SECTION 7.** 48.417(1)(bm) of the statutes is created to read:

include in the order under sub. (5)  
a finding that there is  
probable cause to believe

= to start  
60-day  
clock  
running  
for TPR

probable  
cause to  
believe  
ch. has juv  
prob. cause  
to believe has  
been relinquished

agency or the d.a., co.p. counsel, or other

48.417(1)(bm) A court of competent jurisdiction has found that a parent of the child relinquished custody of the child under s. 48.195(1) or under the law of any other state or a federal law that is comparable to s. 48.195(1). If the circumstances specified in this paragraph apply, the petition shall be filed or joined in by the appropriate person <sup>shand</sup> ~~designated~~ <sup>up</sup> under s. 48.09 in the county in which the relinquishment occurred no earlier than 30 days after the date on which the child was relinquished as described in this paragraph and no later than 60 days after the date on which the court of competent jurisdiction found in the hearing under s. 48.21(4m) that the child was relinquished as described in this paragraph.

#### **SECTION 8. Initial applicability.**

(1) TERMINATION OF PARENTAL RIGHTS AND ADOPTIVE PLACEMENT OF NEWBORN CHILD WHOSE CUSTODY HAS BEEN RELINQUISHED. This act first applies to a child whose custody is relinquished, as described in section 48.195(1) of the statutes, on the effective date of this subsection.

2003

Date (time)  
needed

DATE

LRBs 006711

# SUBSTITUTE AMENDMENT [TO A BILL]

GMM: Kmg

Use the appropriate components and routines developed for substitute amendments.

S (A) [SUBSTITUTE AMENDMENT]

TO 2003 SB (AB) 73 (LRB)

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to:

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION #.

~~2003 ASSEMBLY BILL 73~~

February 18, 2003 - Introduced by Representatives ~~LADWIG, JESKEWITZ, AINSWORTH, FREESE, FRISKE, GIELOW, GRONEMUS, GUNDERSON, HAHN, HINES, HUEBSCH, JENSEN, KERKMAN, KRAWCZYK, F. LASEE, M. LEHMAN, MCCORMICK, MONTGOMERY, MUSSER, OLSEN, OTT, OWENS, PETROWSKI, PLOUFF, SERATTI, TOWNSEND, VRAKAS and J. WOOD, cosponsored by Senators STEPP, COWLES, KANAVAS, LAZICH, ROESSLER and SCHULTZ. Referred to Committee on Children and Families.~~

1 AN ACT *to amend* 48.21 (4) (intro.); and *to create* 48.21 (4m) and 48.417 (1) (bm)  
2 of the statutes; **relating to:** termination of parental rights and adoptive  
3 placement of a newborn child whose custody has been relinquished by his or her  
4 parent.

---

***Analysis by the Legislative Reference Bureau***

Under current law, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger (newborn child) may be taken into custody under circumstances in which a parent of the newborn child relinquishes custody of the newborn child to the law enforcement officer, emergency medical technician, or hospital staff member and does not indicate an intent to return for the newborn child. Within 24 hours after taking the newborn child into custody, the law enforcement officer, emergency medical technician, or hospital staff member must deliver the newborn child to the intake worker of the court assigned to exercise jurisdiction under the Children's Code (juvenile court), and the intake worker must determine whether to hold the newborn child in custody. If the intake worker determines to hold the newborn child in custody, a hearing must be held within 48 hours of that determination to determine whether the newborn child shall continue to be held in custody. If the juvenile court finds that the newborn child should continue to be held in custody, the juvenile court must include in its order continuing the newborn child in custody a determination that reasonable efforts to make it possible for the newborn child to return safely home are not required and must hold a hearing within 30 days after that

## ASSEMBLY BILL 73

, and include in the continuation of custody order a finding that there is probable cause to believe that a parent's custody of the newborn child has been relinquished as provided under current law

LRB-0355/1  
GMM:kmg:jf

determination to determine a permanency plan for the newborn child, which is a plan designed to ensure that a child quickly attains a placement or home providing long-term stability. Current law also permits the juvenile court to involuntarily terminate the parental rights of a parent of a newborn child on the grounds that the parent relinquished custody of the newborn child when the newborn child was 72 hours old or younger.

This bill provides that if a juvenile court determines that a newborn child whose custody has been relinquished as provided under current law should be continued to be held in custody, the juvenile court must transfer guardianship and legal custody of the newborn child to the Department of Health and Family Services (DHFS), a child welfare agency that is licensed to accept guardianship of children and to place children for adoption, or a county department of human services or social services (county department) that is authorized to accept guardianship of children and to place children for adoption and must order DHFS, the child welfare agency, or the county department (collectively, "agency") to place the newborn child for adoption in a licensed foster home or a licensed treatment foster home. Under the bill, the agency making the placement must require the proposed adoptive parent to sign a statement acknowledging that the proposed adoptive parent understands that there is no guarantee that the adoption will be finalized. The bill also requires a petition to terminate the parental rights of a parent of a newborn child who has been relinquished as provided under current law to be filed no earlier than 30 days after the date on which the child was relinquished and no later than 60 days after the date on which the juvenile court found that the child was relinquished.

~~For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.~~

probable cause to believe

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 48.21 (4) (intro.) of the statutes is amended to read:

48.21 (4) CONTINUATION OF CUSTODY. (intro.) If Subject to sub. (4m), if the judge or circuit court commissioner finds that the child should be continued in custody under the criteria of s. 48.205, ~~he or she~~ the judge or circuit court commissioner shall enter one of the following orders:

SECTION 2. 48.21 (4m) of the statutes is created to read:

48.21 (4m) CONTINUATION OF CUSTODY; RELINQUISHED NEWBORN CHILD. If the judge or circuit court commissioner finds that a child who has been taken into

by the agency or by the district attorney, corporation counsel, or another appropriate official of the county in which the relinquishment occurred

substitute amendment

(use twice)  
substitute amendment

any

Insert 2-1

**ASSEMBLY BILL 73**

and include in the continuation  
 custody order a finding that there is probable  
 cause to believe that a parent of the child  
 custody under s. 48.195 (1) should be continued in custody under the criteria of s.  
 48.205, the judge or circuit court commissioner shall transfer guardianship and legal  
 custody of the child to the department, a child welfare agency licensed under s. 48.61  
 (5), or a county department authorized to accept guardianship under s. 48.57 (1) (e)  
 and shall order the department, child welfare agency, or county department to place  
 the child for adoption under s. 48.833. The department, child welfare agency, or  
 county department making the placement shall require <sup>any</sup> proposed adoptive  
 parent to sign a statement acknowledging that the proposed adoptive parent  
 understands that there is no guarantee that the adoption will be finalized.

**SECTION 3.** 48.417 (1) (bm) of the statutes is created to read:

48.417 (1) (bm) <sup>has</sup> A court of competent jurisdiction <sup>The court</sup> has found that a parent of the  
 child relinquished custody of the child <sup>as described</sup> under s. 48.195 (1) or under the law of any <sup>in s.</sup>  
 other state or a federal law that is comparable to s. 48.195 (1). If the circumstances <sup>48.13 (2m)</sup>  
 specified in this paragraph apply, the petition shall be filed or joined in no earlier  
 than 30 days after the date on which the child was relinquished as described in <sup>S. 48.13 (2m)</sup>  
 paragraph and no later than 60 days after the date on which the court <sup>under s. 48.21 (4m)</sup> of competent  
 jurisdiction <sup>probable cause to believe</sup> found that the child was relinquished as described in this paragraph. <sup>S. 48.13 (2m)</sup>

**SECTION 4. Initial applicability.**

(1) TERMINATION OF PARENTAL RIGHTS AND ADOPTIVE PLACEMENT OF NEWBORN CHILD  
 WHOSE CUSTODY HAS BEEN RELINQUISHED. This act first applies to a child whose custody  
 is relinquished, as described in section 48.195 (1) of the statutes, on the effective date  
 of this subsection.

<sup>has</sup> relinquished custody  
 of the child <sup>as</sup>  
 described in s. 48.13  
 (2m) ✓

(END)


by the agency or by the district  
 attorney, corporation counsel, or  
 other appropriate official  
 designated under s. 48.09 of the  
 county in which the relinquishment  
 occurred

Insert 2-1

✓  
Section #. 48.14 (2) (a) of the statutes is amended to read:

48.14 (2) (a) For a minor, where parental rights have been terminated under subch. VIII, ~~or~~ 

History: 1975 c. 430; 1977 c. 354, 449; 1979 c. 32 s. 92 (2); 1979 c. 300; 1979 c. 330 ss. 3, 13; 1981 c. 81 ss. 5, 33; 1985 a. 50; 1989 a. 161; 1993 a. 318; 1995 a. 38, 77, 275; 1997 a. 164, 292, 334.



62572-1

Section #. 48.14 (2) (b) of the statutes is amended to read:

48.14 (2) (b) The appointment and removal of a guardian of the person for a child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977 and 48.978 and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian.

History: 1975 c. 430; 1977 c. 354, 449; 1979 c. 32 s. 92 (2); 1979 c. 300; 1979 c. 330 ss. 3, 13; 1981 c. 81 ss. 5, 33; 1985 a. 50; 1989 a. 161; 1993 a. 318; 1995 a. 38, 77, 275; 1997 a. 164, 292, 334.

or because custody of the child  
has been relinquished under  
s. 48.195 (1)

Ex 2-1

Section #. 48.185 (2) of the statutes is amended to read:

any action or proceeding specified  
in this subsection

48.185 (2) In an action under s. 48.41, venue shall be in the county where the birth parent or child resides at the time that the petition is filed. Venue for any proceeding under s. 48.363, 48.365, or 48.977, or any proceeding under subch. VIII when the child has been placed outside the home pursuant to a dispositional order under s. 48.345 or 48.347, shall be in the county where the dispositional order was issued, unless the child's county of residence has changed, or the parent of the child or the expectant mother of the unborn child has resided in a different county of this state for 6 months. ~~In either case, the~~ court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child, parent or expectant mother.

History: 1977 c. 354; Stats. 1977 s. 48.185; 1979 c. 330; 1989 a. 161; 1993 a. 98, 318, 491; 1995 a. 77, 275; 1997 a. 80, 292.

Venue for any proceeding under s. 48.13 (2m) shall  
be in the  
county concerning a child whose custody has been relinquished  
under s. 48.195 (1) shall be in the county in  
which the relinquishment occurred. Notwithstanding  
the venue specified in this subsection, the

(edit insert)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0067/1dn

GMM.....  
*Kmg*

Representative Ladwig:

In reviewing this draft, please note all of the following:

1. The DHFS language specifies that venue for any proceeding under s. 48.13 (2m), 48.21 (4m), or 48.417 (1) (bm) shall be in the county of the relinquishment. This draft does not include the references to s. 48.21 (4m) or 48.417 (1) (bm) for the following reasons:

a. A reference to s. 48.21 (4m) is not necessary because a temporary physical custody hearing is part of a proceeding under s. 48.13 (2m) in that s. 48.21 (1) requires a CHIPS petition, in this case a petition alleging that the juvenile court has jurisdiction under s. 48.13 (2m), to be filed by the time of the temporary physical custody hearing. Also, as a practical matter, for a child who has been relinquished there is no possible county of venue other than the county in which the relinquishment occurred in that the child has no other county of residence and is not present in any other county.

b. A reference to s. 48.417 (1) (bm) is not necessary because under s. 48.185 (2) venue for a TPR proceeding for a child who has been placed outside the home under a CHIPS dispositional order is in the county where the dispositional order was issued. The substitute amendment already provides that venue for the CHIPS proceeding is in the county of relinquishment, so the dispositional order will have been issued in that county. As such, the TPR proceeding will take place in that county as well.

2. The DHFS language requires the judge or circuit court commissioner to include in the temporary physical custody order a finding that the child has been relinquished. Actually, at the temporary physical custody hearing, the judge or court commissioner finds *probable cause* to believe that the child is within the jurisdiction of the juvenile court. See s. 48.205 (1) (intro.). Accordingly, this draft clarifies that the order must include a finding that there is *probable cause* to believe that the child has been relinquished.

Indeed, it is arguably not necessary to specifically require a finding that the child has been relinquished because that is already covered under current law. Specifically, s. 48.21 (4m), as created by the draft, refers to a finding that the child should be continued in custody *under the criteria of s. 48.205.* Section 48.205 (1) (intro.), in turn, requires a determination that there is probable cause to believe the child is within the

jurisdiction of the juvenile court. In this case, the jurisdictional ground is <sup>s.</sup> 48.13 (2m), i.e., that the child has been relinquished. Accordingly, the order, which under s. 48.21 (5) must list the reasons and criteria forming the basis for the decision, would already under current law include a finding that there is probable cause to believe that the child has been relinquished as provided in s. 48.13 (2m).

3. The DHFS language specifies in s. 48.417 (1) (bm) that the TPR petition must be filed by the appropriate official designated under s. 48.09 in the county in which the relinquishment occurred. Actually, a TPR petition may also be filed by the agency, that is, by DHFS, the county department, or a child welfare agency, or by the district attorney or corporation counsel. See ss. 48.417 (1) (intro.) and 48.42 (1). Accordingly, this draft references the agency, the district attorney, and the corporation counsel as well as the official designated under s. 48.09.

Again, it is arguably unnecessary to specify that the district attorney, corporation counsel, or other appropriate official be of the county where the relinquishment occurred because the draft already amends s. 48.185 (2) to provide that venue for the TPR proceeding is in that county. As such, no other county would even be involved.

If you have any questions about the draft, please do not hesitate to contact me directly at the phone number or e-mail address listed below. If after reviewing the draft and this drafter's note the DHFS officials agree with the points made in this drafter's note, I would be happy to do a redraft to eliminate all unnecessary language added by this draft.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: gordon.malaise@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0067/1dn  
GMM:kmg:cph

April 29, 2003

Representative Ladwig:

In reviewing this draft, please note all of the following:

1. The DHFS language specifies that venue for any proceeding under s. 48.13 (2m), 48.21 (4m), or 48.417 (1) (bm) shall be in the county of the relinquishment. This draft does not include the references to s. 48.21 (4m) or 48.417 (1) (bm) for the following reasons:

a. A reference to s. 48.21 (4m) is not necessary because a temporary physical custody hearing is part of a proceeding under s. 48.13 (2m) in that s. 48.21 (1) requires a CHIPS petition, in this case a petition alleging that the juvenile court has jurisdiction under s. 48.13 (2m), to be filed by the time of the temporary physical custody hearing. Also, as a practical matter, for a child who has been relinquished there is no possible county of venue other than the county in which the relinquishment occurred in that the child has no other county of residence and is not present in any other county.

b. A reference to s. 48.417 (1) (bm) is not necessary because under s. 48.185 (2) venue for a TPR proceeding for a child who has been placed outside the home under a CHIPS dispositional order is in the county where the dispositional order was issued. The substitute amendment already provides that venue for the CHIPS proceeding is in the county of relinquishment, so the dispositional order will have been issued in that county. As such, the TPR proceeding will take place in that county as well.

2. The DHFS language requires the judge or circuit court commissioner to include in the temporary physical custody order a finding that the child has been relinquished. Actually, at the temporary physical custody hearing, the judge or court commissioner finds *probable cause* to believe that the child is within the jurisdiction of the juvenile court. See s. 48.205 (1) (intro.). Accordingly, this draft clarifies that the order must include a finding that there is *probable cause* to believe that the child has been relinquished.

Indeed, it is arguably not necessary to specifically require a finding that the child has been relinquished because that is already covered under current law. Specifically, s. 48.21 (4m), as created by the draft, refers to a finding that the child should be continued in custody *under the criteria of s. 48.205.* Section 48.205 (1) (intro.), in turn, requires a determination that there is probable cause to believe the child is within the

jurisdiction of the juvenile court. In this case, the jurisdictional ground is 48.13 (2m), *i.e.*, that the child has been relinquished. Accordingly, the order, which under s. 48.21 (5) must list the reasons and criteria forming the basis for the decision, would already under current law include a finding that there is probable cause to believe that the child has been relinquished as provided in s. 48.13 (2m).

3. The DHFS language specifies in s. 48.417 (1) (bm) that the TPR petition must be filed by the appropriate official designated under s. 48.09 in the county in which the relinquishment occurred. Actually, a TPR petition may also be filed by the agency, that is, by DHFS, the county department, or a child welfare agency, or by the district attorney or corporation counsel. See ss. 48.417 (1) (intro.) and 48.42 (1). Accordingly, this draft references the agency, the district attorney, and the corporation counsel as well as the official designated under s. 48.09.

Again, it is arguably unnecessary to specify that the district attorney, corporation counsel, or other appropriate official be of the county where the relinquishment occurred because the draft already amends s. 48.185 (2) to provide that venue for the TPR proceeding is in that county. As such, no other county would even be involved.

If you have any questions about the draft, please do not hesitate to contact me directly at the phone number or e-mail address listed below. If after reviewing the draft and this drafter's note the DHFS officials agree with the points made in this drafter's note, I would be happy to do a redraft to eliminate all unnecessary language added by this draft.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.state.wi.us](mailto:gordon.malaise@legis.state.wi.us)

## Malaise, Gordon

From: Durkin, Therese  
Sent: Friday, May 16, 2003 9:52 AM  
To: Malaise, Gordon; Mitchell, Mark  
Subject: Fwd: Assembly Sub. Amend. to AB 73

CR 48.417 (1m)



AB 73, Ass. Sub. Amend, Drafte...  
AB 73, Ass. Sub. Amend.pdf

*If... relinquished... DA... shall  
submit TPR petition...*

*Reference to...  
would be fine else have filed?*

Hi, as you know from my voice mail I am either confused or concerned about the issue in Par. 3 of the April 29 Drafter's note. My concern is that the language in s. 48.417 seems to still place responsibility on DHFS as the guardian agency to file a TPR for a relinquished baby. It is true the language also places responsibility on the DA or Corp Counsel, but once we have guardianship, and the county has no legal responsibility for the child, I'm concerned that the county DA or Corp Counsel will feel no responsibility to handle the TPR. Until this legislation, DHFS has never been given guardianship of a child until after TPR as a matter of law. We are not equipped (do not have the expertise or staff) to handle TPR petitions throughout the state. These TPRs can be handled more efficiently by the county, but again, I'm concerned the counties will believe they have no responsibility to do the TPRs once they have no legal responsibility for the child. Sorry to beat a dead horse if this is a dead horse, and to probably go around the bend to do it, but time is getting short and I wanted to address this as quickly as I could to someone who can either help me or set me straight. Please give a call if you want to discuss (7-9722). Thanks,  
Therese

-----Original Message-----

Date: 05/16/2003 09:33 am -0500 (Friday)  
From: Mark Mitchell  
To: Hale, Janine  
CC: Campbell, Mark; Durkin, Therese; Radloff, Gary; Sappenfield, Anne; Smith, Amy  
Subject: Assembly Sub. Amend. to AB 73

Hi, Janine. The substitute amendment and Gordon's comments combined respond to all of our issues. So looks good from here. Thanks a lot.

--Mark



State of Wisconsin  
2003 - 2004 LEGISLATURE

NOTE

SOON

LRBs0067/  
GMM:kmg:cph (2)  
RMR

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2003 ASSEMBLY BILL 73

Reaminate

1 AN ACT *to amend* 48.14 (2) (a), 48.14 (2) (b), 48.185 (2) and 48.21 (4) (intro.); and  
2 *to create* 48.21 (4m) and 48.417 (1) (bm) of the statutes; **relating to:**  
3 termination of parental rights and adoptive placement of a newborn child  
4 whose custody has been relinquished by his or her parent.

***Analysis by the Legislative Reference Bureau***

Under current law, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger (newborn child) may be taken into custody under circumstances in which a parent of the newborn child relinquishes custody of the newborn child to the law enforcement officer, emergency medical technician, or hospital staff member and does not indicate an intent to return for the newborn child. Within 24 hours after taking the newborn child into custody, the law enforcement officer, emergency medical technician, or hospital staff member must deliver the newborn child to the intake worker of the court assigned to exercise jurisdiction under the Children's Code (juvenile court), and the intake worker must determine whether to hold the newborn child in custody. If the intake worker determines to hold the newborn child in custody, a hearing must be held within 48 hours of that determination to determine whether the newborn child shall continue to be held in custody. If the juvenile court finds that the newborn child should continue to be held in custody, the juvenile court must include in its order continuing the newborn child in custody a determination

that reasonable efforts to make it possible for the newborn child to return safely home are not required and must hold a hearing within 30 days after that determination to determine a permanency plan for the newborn child, which is a plan designed to ensure that a child quickly attains a placement or home providing long-term stability. Current law also permits the juvenile court to involuntarily terminate the parental rights of a parent of a newborn child on the grounds that the parent relinquished custody of the newborn child when the newborn child was 72 hours old or younger.

This substitute amendment provides that if a juvenile court determines that a newborn child whose custody has been relinquished as provided under current law should be continued to be held in custody, the juvenile court must transfer guardianship and legal custody of the newborn child to the Department of Health and Family Services (DHFS), a child welfare agency that is licensed to accept guardianship of children and to place children for adoption, or a county department of human services or social services (county department) that is authorized to accept guardianship of children and to place children for adoption, order DHFS, the child welfare agency, or the county department (collectively, "agency") to place the newborn child for adoption in a licensed foster home or a licensed treatment foster home, and include in the continuation of custody order a finding that there is probable cause to believe that custody of the newborn child has been relinquished as provided under current law. Under the substitute amendment, the agency making the placement must require any proposed adoptive parent to sign a statement acknowledging that the proposed adoptive parent understands that there is no guarantee that the adoption will be finalized. The substitute amendment also requires a petition to terminate the parental rights of a parent of a newborn child who has been relinquished as provided under current law to be filed by the agency or by the district attorney, corporation counsel, or another appropriate official of the county in which the relinquishment occurred no earlier than 30 days after the date on which the child was relinquished and no later than 60 days after the date on which the juvenile court found probable cause to believe that the child was relinquished.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 48.14 (2) (a) of the statutes is amended to read:

2           48.14 (2) (a) For a minor, where parental rights have been terminated under  
3       subch. VIII; or,

4           **SECTION 2.** 48.14 (2) (b) of the statutes is amended to read:

5           48.14 (2) (b) The appointment and removal of a guardian of the person for a  
6       child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977, and

1 48.978 and ch. 880 and for a child found to be in need of protection or services under  
2 s. 48.13 (1) or (2m) because the child is without a parent or guardian or because  
3 custody of the child has been relinquished under s. 48.195 (1).

4 **SECTION 3.** 48.185 (2) of the statutes is amended to read:

5 48.185 (2) In an action under s. 48.41, venue shall be in the county where the  
6 birth parent or child resides at the time that the petition is filed. Venue for any  
7 proceeding under s. 48.363, 48.365, or 48.977, or any proceeding under subch. VIII  
8 when the child has been placed outside the home pursuant to a dispositional order  
9 under s. 48.345 or 48.347, shall be in the county where the dispositional order was  
10 issued, unless the child's county of residence has changed, or the parent of the child  
11 or the expectant mother of the unborn child has resided in a different county of this  
12 state for 6 months. In either case, the Venue for any proceeding under s. 48.13 (2m)  
13 concerning a child whose custody has been relinquished under s. 48.195 (1) shall be  
14 in the county in which the relinquishment occurred. Notwithstanding the venue  
15 specified in this subsection, the court may, upon a motion and for good cause shown,  
16 transfer the case any action or proceeding specified in this subsection, along with all  
17 appropriate records, to the county of residence of the child, parent, or expectant  
18 mother.

19 **SECTION 4.** 48.21 (4) (intro.) of the statutes is amended to read:

20 48.21 (4) CONTINUATION OF CUSTODY. (intro.) If Subject to sub. (4m), if the judge  
21 or circuit court commissioner finds that the child should be continued in custody  
22 under the criteria of s. 48.205, he or she the judge or circuit court commissioner shall  
23 enter one of the following orders:

24 **SECTION 5.** 48.21 (4m) of the statutes is created to read:

48.21 (4m) CONTINUATION OF CUSTODY; RELINQUISHED NEWBORN CHILD. If the judge or circuit court commissioner finds that a child who has been taken into custody under s. 48.195 (1) should be continued in custody under the criteria of s. 48.205, the judge or circuit court commissioner shall transfer guardianship and legal custody of the child to the department, a child welfare agency licensed under s. 48.61 (5), or a county department authorized to accept guardianship under s. 48.57 (1) (e) or (hm), order the department, child welfare agency, or county department to place the child for adoption under s. 48.833, and include in the continuation of custody order a finding that there is probable cause to believe that a parent of the child has relinquished custody of the child as described in s. 48.13 (2m). The department, child welfare agency, or county department making the placement shall require any proposed adoptive parent to sign a statement acknowledging that the proposed adoptive parent understands that there is no guarantee that the adoption will be finalized.

SECTION 6. 48.417 ~~(10)(14)~~ of the statutes is created to read: } if the

48.417 (b) (1m) The court has found, under s. 48.21 (4m), probable cause to believe that a parent of the child has relinquished custody of the child as described in s. 48.13 (2m). ~~If the circumstances specified in this paragraph apply, the petition shall be filed or joined in by the agency or by the district attorney, corporation counsel, or other appropriate official designated under s. 48.09 of the county in which the relinquishment occurred no earlier than 30 days after the date on which the child was relinquished as described in s. 48.13 (2m) and no later than 60 days after the date on which the court found, under s. 48.21 (4m), probable cause to believe that the child was relinquished as described in s. 48.13 (2m).~~ shall file a petition.

## SECTION 7. Initial applicability.

shall file a petition under  
s. 48.42(c) to terminate the  
parental rights of the parent  
parent & the child or, if a

petition ~~to terminate~~ under s. 48.42 (1) to terminate those parental rights has already been filed. shall join in the petition.

Delete Stricken  
text

23  
Insert  
4-24 24

1 (1) TERMINATION OF PARENTAL RIGHTS AND ADOPTIVE PLACEMENT OF NEWBORN CHILD  
2 WHOSE CUSTODY HAS BEEN RELINQUISHED. This act first applies to a child whose custody  
3 is relinquished, as described in section 48.195 (1) of the statutes, on the effective date  
4 of this subsection.

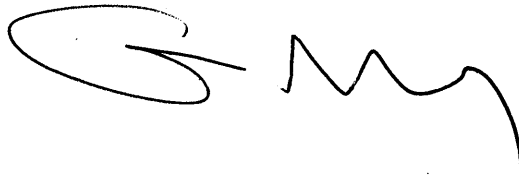
5 (END)

DIVOTE

Representative Ludwig:

DHS's Legal Counsel

On the advice of Therese Durkin, this redraft eliminates a reference to "the agency" filing the TPR petition, thereby clarifying that the district attorney, corporation counsel, or other appropriate county official is responsible for filing the TPR petition.



(Insert 4-24)

Section #. 48.417 (3) of the statutes is amended to read:

or (lm) ✓

48.417 (3) ~~CONCURRENT ADOPTION EFFORTS REQUIRED.~~ If a petition is filed or joined in as required under sub. (1), the agency primarily responsible for providing services to the child under a court order shall, during the pendency of the proceeding on the petition, work with the agency identified in the report under s. 48.425 (1) (f) that would be responsible for accomplishing the adoption of the child in processing and approving a qualified family for the adoption of the child.

History: 1997 a. 237; 2001 a. 109.



Insert 4-24)

Section #. 48.417 (4) of the statutes is amended to read:

or (lm)

48.417 (4) NOTICE TO DEPARTMENT. If a petition is filed or joined in as required under sub. (1), the person who filed or joined in the petition shall notify the department of that filing or joinder.

History: 1997 a. 237; 2001 a. 109.

(end of insert)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0067/2dn  
GMM:kmg:jf

May 20, 2003

Representative Ladwig:

On the advice of DHFS Legal Counsel Therese Durkin, this redraft eliminates a reference to "the agency" filing the TPR petition, thereby clarifying that the district attorney, corporation counsel, or other appropriate county official is responsible for filing the TPR petition.

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